

EXHIBIT 4

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE SOUTHERN DISTRICT OF OHIO
7

8 MAFCOTE, INC.,

9 Plaintiff,

10 vs.

11 GENATT ASSOCIATES, INC.,

12 Defendant.
13
14

CASE NO. 1:04-CV-853

15 DEPOSITION

16 of TERRENCE A. REIFF, taken before me, Lori Jay, a
17 Registered Professional Reporter and Notary Public in and
18 for the State of Ohio at large, pursuant to notice and
19 agreement of counsel, as on Cross Examination, at the law
20 offices of Bieser, Greer & Landis, 400 National City
21 Center, in the City of Dayton, County of Montgomery, and
22 State of Ohio, on Tuesday, the 31st day of October, 2006,
23 beginning at 9:01 A.M.
24
25

1 time, in risk management since that time, correct?

2 A. That's correct.

3 Q. You were involved part time starting a couple of
4 years after your retirement in 2002 through, what, the
5 summer of this year, 2006?

6 A. That's correct.

7 Q. You've told me that you're not a broker or you
8 don't have the expertise as a broker, correct?

9 A. That's correct.

10 Q. Do you have expertise in coverage issues?

11 A. Yes. I believe I do.

12 Q. Do you have expertise in putting together
13 insurance claims?

14 A. Yes.

15 Q. Is it your understanding that a broker
16 represents an insured?

17 A. That's -- yes.

18 Q. Doesn't represent the insurance company?

19 A. That's correct.

20 Q. Is it your understanding that a broker's duty is
21 to act in the best interests of the insured?

22 A. Yes.

23 Q. Have you -- were you involved in boiler and
24 machinery losses when you were with the Mead Corporation?

25 A. Yes, sir.

1 that analysis to the operations of the company.

2 Q. What services would you look for from that
3 independent consultant?

4 A. Risk analysis; that is looking at flow charts
5 and other information about how Mafcote conducted its
6 operations, and then using that information relating it to
7 the coverage offered, and then making recommendations
8 about any changes that the consultant felt were to be
9 appropriate.

10 Q. Aren't all of those things something that
11 Mafcote could expect from their broker, Genatt?

12 MR. WALULIK: Objection. Lacks foundation.

13 You can answer.

14 THE WITNESS: I suppose in an informal way they
15 could. I'm not aware of any formal arrangement either by
16 handshake or in writing as to what services Mafcote should
17 have expected from its broker.

18 BY MR. GREER:

19 Q. Do you have an understanding that Genatt had
20 individuals who were experts in coverage issues?

21 A. I don't have that understanding. It would be
22 expectation, however.

23 Q. Okay. And so as far as coverage issues are
24 concerned, it would be reasonable for Mafcote to depend
25 and rely on experts within Genatt in that area, correct?

1 A. Yes.

2 Q. And is it your understanding that
3 recommendations in relation to boiler and machinery losses
4 were made by Genatt to Mafcote?

5 A. I'm aware of one, and I'm not sure if this was
6 just a statement by Mr. Blumberg or something Genatt said,
7 and that had to do with the purchase of contingent
8 business interruption insurance. I know Mr. Blumberg's
9 report made reference to that.

10 Now, whether Genatt actually did that, whether
11 it was considered, and as I said in my report, that would
12 seem to be redundant because they've already been assured
13 the coverage was okay.

14 Q. Is it your understanding that all
15 recommendations made by Genatt to Mafcote in relation to
16 boiler and machinery coverage were accepted?

17 A. I don't know what recommendations they made so I
18 can't comment.

19 Q. Dealing with recommendations and coverage issues
20 would -- would follow these three things that you've
21 talked about for an independent consultant: risk analysis,
22 coverage offered, and recommendations, correct?

23 A. Yeah. Yes.

24 Q. So getting another party to look at these issues
25 would be repeating the work that Genatt was already

1 performing, correct?

2 MR. WALULIK: Objection. Mischaracterizes his
3 previous testimony. Lacks foundation.

4 You can answer if you know.

5 THE WITNESS: I don't know that it would
6 duplicate or not because I didn't or I wasn't provided
7 with any information as to what Genatt said or did.

8 BY MR. GREER:

9 Q. Are there any other areas in your opinion that
10 this independent consultant would give service to Mafcote
11 than what you've referenced in your report?

12 A. An independent consultant could at the time of
13 the claim provide advice as to how certain things were
14 done or should have been done to bring the best benefit to
15 Mafcote.

16 Q. Again, are you aware whether Genatt had people
17 who were experts putting claims together?

18 A. I'm not specifically aware of that.

19 Q. Have you seen any correspondence with a
20 gentleman by the name of Ed Digioia? That's

21 D-I-G-I-O-I-A.

22 A. Yes.

23 Q. And do you know what Mr. Digioia's expertise is?

24 A. I'd have to relook at his letter, and I don't
25 have that with me, so I don't recall. I believe he's with

1 CNA claims, but I may be wrong there.

2 Q. There would have been a gentleman with Genatt.

3 A. Oh, okay.

4 Q. There's a Nick Bosevich who you may be thinking
5 of.

6 A. Oh, okay.

7 Q. The names get confused.

8 A. The adjuster. Okay. Uh-huh.

9 Q. In relation to this opinion and in relation to
10 the claim submission, what advice do you believe an
11 independent consultant or additional policy analysis would
12 provide that would have changed the situation we have here
13 in any way? How would it cause it to be different?

14 A. Who would have made the purchase of the
15 replacement material seems to be the key here. Based upon
16 the policy and the way it was written somebody should have
17 known that by Royal, the other Mafcote subsidiary, making
18 the purchase that that eliminated some protection that
19 Mafcote wanted, and I think a consultant, it wouldn't
20 necessarily have to be an insurance or risk management
21 consultant, it could be just a general business consultant
22 who understood insurance coverages, could have figured
23 that out.

24 Q. Is it your opinion that if the claim was written
25 as Miami Valley or Miami Valley Wabash, the plant in

1 Franklin, --

2 A. Yes.

3 Q. -- suffering the loss rather than Royal Consumer
4 Products suffering the loss that that would have made a
5 difference in this case?

6 A. Yes. That's how I feel.

7 Q. And are you aware that the advice given from
8 Genatt was that it didn't make a difference in this case?

9 MR. WALULIK: Objection. Lacks foundation.
10 Mischaracterizes prior depositions.

11 But go ahead. You can answer if you know.

12 Would you read back the question?

13 (The indicated question was read back.)

14 THE WITNESS: I'm not aware of that. If I
15 could --

16 BY MR. GREER:

17 Q. If that was the advice would you say that advice
18 was incorrect?

19 A. If their -- if their advice was it wouldn't have
20 made a difference? Is that what you're saying?

21 Q. Yes. Yes.

22 A. I wouldn't agree with what they said.

23 Q. And it's your opinion that if the claim was
24 written so that the loss flowed through Miami Valley
25 Paper --

1 A. Uh-huh.

2 Q. -- that there would have been coverage in this
3 case?

4 A. For the business interruption aspect of this
5 loss?

6 Q. Yes.

7 A. That's how I feel.

8 Q. Let me have you go to exhibit 12 in this stack
9 of papers you have in front of you here.

10 A. I have it.

11 Q. Okay. Have you seen -- this is just a form
12 endorsement from CNA for contingent business interruption;
13 is that right?

14 A. I would have to read it thoroughly, but it says
15 that in the heading.

16 Q. Have you seen this before?

17 A. I don't recall seeing it, but it may have been
18 in the material you provided and it just -- there was a
19 lot of it.

20 Q. This is the subject of the second bullet point
21 in at least the large paragraphs of your opinion on the
22 second page under Coverage, correct?

23 A. Yes.

24 Q. And your opinion here is that there would be no
25 reason to get this type of an endorsement because there

1 was already coverage in place on the policy itself?

2 A. No. I didn't say that. I said they were
3 assured that coverage was in place.

4 Q. Okay.

5 A. That was my understanding, that Mafcote was
6 assured that coverage was in place.

7 Q. Okay. Is it your opinion that coverage was in
8 place?

9 A. No. I do not believe it was in place.

10 Q. So Genatt told them that the coverage was in
11 place, and in fact it was not, correct?

12 A. Based on the material provided to me, that's my
13 interpretation.

14 Q. Okay. Is it your understanding that, if you
15 have one, that Mafcote relied on Genatt's representations
16 that coverage was in place?

17 A. That's my impression, that they relied on their
18 statements.

19 Q. And if this contingent business interruption
20 endorsement was added is it your opinion that that would
21 have provided enough coverage, or do you know?

22 A. A contingent --

23 MR. WALULIK: You can take a look at your
24 opinion if you need to know what he's referring to in your
25 report.

1 THE WITNESS: A contingent business interruption
2 endorsement, as I recall, may have a limit of liability on
3 behalf of the insurance company. This doesn't say that.
4 I couldn't say for sure that there would be enough
5 coverage. It might be broad enough, but was it high
6 enough?

7 BY MR. GREER:

8 Q. Your opinion that there was not coverage in
9 place for this loss, is that opinion the same whether or
10 not the claim is written as Miami Valley suffering the
11 loss or Royal Consumer Products?

12 A. If Miami Valley had suffered the entire loss, if
13 they had purchased the additional material on the open
14 market and then supplied it to Royal at the agreed-upon
15 price, then I believe coverage would be in place, but with
16 Royal buying its own substitute product on the open market
17 at some inflated price it's clear to me based on the
18 material I was provided that there's no coverage.

19 Q. What if Royal went ahead and purchased, as what
20 happened in this case, but the claim was made under Miami
21 Valley due to Miami Valley's liability to Royal Consumer?

22 A. I suppose there might be a little claims fraud
23 involved then.

24 Q. So in your opinion that would not fly?

25 A. No. It would not be the proper way to do it. I

1 don't know whether it would fly or not but it wouldn't be
2 the proper way to do it.

3 Q. It's your opinion further to be coverage in this
4 case it would have had to have been Mafcote that made the
5 purchases to the outside third party vendors -- I'm sorry,
6 not Mafcote -- Miami Valley to make the purchases?

7 A. My opinion is Miami Valley should have made the
8 purchases at whatever inflated price they had to pay, thus
9 responding to their contractual requirements, and then
10 they would have the claim.

11 Q. Could the policy have been written in a way to
12 provide coverage with Royal Consumer Products purchasing
13 the product from the third party vendors?

14 A. Theoretically it could have been done. Would
15 the insurance company have agreed to some changes that
16 would have expanded the coverage? I don't know.

17 Q. Tell me how it would have been written
18 differently for that coverage to be in place.

19 A. The thought that came to my mind is that the
20 named insured wording should have had some reference to
21 collectively and not separately. Or -- yeah.

22 Or maybe there's a better way to say that, but
23 if there would have been some collective wording in there
24 theoretically that might have led to coverage for the
25 business interruption.

1 Q. What if the named insured was Mafcote and its
2 subsidiaries; would that have done the trick?

3 A. I think you'd still need the collective wording
4 in my opinion.

5 Q. And tell me what you mean by the collective
6 wording then.

7 A. Well, right now it's written as though it's
8 Mafcote and then each of the subsidiary's names are
9 delineated out so they're all independent of each other.
10 However, by putting in some wording that says we're going
11 to collectively cover all of you, and a loss at one is
12 considered a loss for all, then we may have had some
13 coverage, but that assumes that the underwriter at CNA
14 would accept that, and if he did would Mafcote have
15 accepted any change in premium, because maybe the
16 underwriter would want additional money because he would
17 recognize an inflated risk to him.

18 Q. In your experience is that something that you
19 have seen, that collective type of wording?

20 A. No. When I was at Mead our approach was more of
21 a -- of a contingent business interruption approach where
22 we had product from a mill going to a converting facility.
23 We approached it from that way, not specifically with an
24 endorsement but we had wording in our policies that
25 covered us for that. We had a number of claims both

1 boiler machinery and just property losses that we
2 perfected.

3 Q. And then going back to this endorsement for
4 contingent business interruption.

5 A. Are you talking about exhibit 12?

6 Q. Yes. It's your opinion that that would not have
7 made any difference in this case?

8 A. My opinion is if this endorsement was a part of
9 the policy, Mafcote and its subsidiaries, it would have
10 provided the coverage.

11 Q. It would have?

12 A. Yes. In my opinion.

13 Q. In the last sentence of the next paragraph, the
14 Named Insured Clauses paragraph, and this is going back to
15 exhibit 76, you write, any differences in Named Insured
16 wording between the policies would have had no impact on
17 coverage or claim payment.

18 A. What line is that?

19 Q. The last sentence.

20 A. Oh, any differences in the Named Insured. Okay.

21 Q. And I take it that's different than what you've
22 just told me about this collectively and individually?

23 A. Right. Yes. There was no material difference
24 between -- so far as how this case is concerned, there's
25 no material difference there. You'd still need in either

1 A. Paid this claim. That's correct. That's how I
2 feel.

3 Q. They would not have?

4 A. No. In my opinion.

5 Q. And then under 7 it says Mafcote relied upon its
6 broker to recommend the proper and necessary insurance
7 coverages that are required in order to properly protect
8 its interests and assets.

9 Now, do you agree or disagree, or do you have no
10 opinion with that?

11 A. I don't totally agree with it because documents
12 I was provided indicated that Mr. Schulman, the president
13 of Mafcote, felt that he had some knowledge in this area.
14 So you can't -- I can't say there was total reliance by
15 Mafcote.

16 Q. Can't say there was total reliance, but some
17 reliance; is that what you're telling me?

18 A. Some reliance. There was some reliance but not
19 total.

20 Q. And what do you base that on?

21 A. Well, the relationship automatically suggests
22 reliance. The relationship between Mafcote and Genatt
23 automatically suggests reliance.

24 Q. And you agree with Mr. Blumberg that the correct
25 way to submit this claim would have been Miami to have

☐ **Griffin** ☐ **Spencer** ☐ **Quinn**

CROSS EXAMINATION

BY MR. MINDLIN:

Q. Good morning, Mr. Reiff.

A. Good morning.

Q. In connection with answering Mr. Greer's questions dealing with the exhibit 12 Contingent Business Interruption Form, you said that in your opinion that form would have provided coverage; is that correct?

A. That's what I said.

Q. And I just need to clarify. When you say would have provided coverage, coverage of the claim as it was presented, meaning with Royal having purchased the substitute product?

A. Yes. Subject to my qualifier I don't know what limit of coverage they would have purchased, and the limit may have been inadequate to cover their two hundred and some thousand dollar loss.

Q. But if there was enough limit of liability and if this form were in place the claim as it was presented in your opinion should have been paid by the insurance company?

A. Yes.

MR. MINDLIN: I have no other questions. Thank
you.

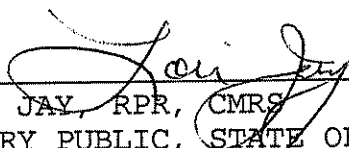
1 STATE OF OHIO :
2 COUNTY OF MONTGOMERY : SS C E R T I F I C A T E

3
4 I, LORI JAY, a Registered Professional Reporter
5 and Notary Public in and for the State of Ohio at large,
6 duly commissioned and qualified;

7 DO HEREBY CERTIFY that the above named TERRENCE
8 A. REIFF, was by me first sworn to testify to the truth,
9 the whole truth, and nothing but the truth; that his
10 testimony was recorded by me in Stenotype and thereafter
11 reduced to typewriting; that the signature of the witness
12 to the deposition was not waived, and was taken at the
13 time and place hereinabove set forth, by notice and
14 agreement of counsel as stated.

15 I FURTHER CERTIFY that I am not a relative or
16 attorney of either party, nor in any manner interested in
17 the event of this action.

18 IN WITNESS WHEREOF I have hereunto set my hand
19 and affixed my seal of office on the 6th day of November,
20 2006.

21
22 
23 LORI JAY, RPR, CMRS
24 NOTARY PUBLIC, STATE OF OHIO
25 My Commission Expires 11-25-11
- - -